

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8650 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

YUNUSBHAI HASANBHAI GHANCHI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YN RAVANI for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order dated 22nd September, 1998 made by the District Magistrate, Bhavnagar under the powers conferred upon him under

Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. It is alleged that the petitioner is a dangerous person within the meaning of Section 2 (c) of the Act and his activities are prejudicial to the maintenance of public order. The petitioner is a resident of village Sanodar of Bhavnagar District. Two offences have been registered against the petitioner and others in Ghogha Police Station on 24th July, 1998 and 15th August, 1998. Besides, some five persons have given statements to the police in respect of nefarious activities carried on by the petitioner which have the effect of disturbing the even tempo of life and public tranquillity. All the incidents referred to in the grounds of detention i.e. registered offences and the unregistered ones have occurred in the village Sanodar or near it.

4. It is contended that the order of detention is vitiated on the grounds : (a) the last of the offences was registered against the petitioner and others on 15th August, 1998 and the statements of witnesses were recorded between 6th August, 1998 and 24th August, 1998. The verification thereof was done on 8th September, 1998, however, the impugned order of detention was not made till 22nd September, 1998. This delay has snapped the live link between the incidents in question and such unexplained delay shall vitiate the order of detention; (b) the privilege claimed under Section 9 (2) is unwarranted and in absence of the names and other particulars of the witnesses, the petitioner's right to make effective representation has been prejudiced; (c) the concerned authority could have moved the Court for cancellation of bail instead of resorting to the drastic action of preventive detention; (d) the petitioner's representation made on 28th October, 1998 has not been dealt with at all. In support of his contention, learned advocate has relied upon the judgment of this Court in the matters of Jakirbhai Rahimbhai Nagori v. District Magistrate, Mehsana & Ors. [1996 (1) GLH 300] and Zubedabibi Rasidkhan Pathan v. State of Gujarat & Ors. [1995 (2) 1135].

5. The petition is contested by the learned AGP Mrs. Punani. She has submitted that there is no inexplicable delay in making the impugned order so as to vitiate it and the detaining authority has duly recorded his subjective satisfaction in respect of the privilege claimed under Section 9 (2) of the Act. She has, therefor relied upon the judgment of this Court in the matter of

Bhikhabhai Thakorbhai Patel v. Commissioner of Police,
Surat City & Ors. [1989 (2) GLH 420].

6. I have persued the records and I find that the representation made by the petitioner was tendered to the Jail Authorities on 28th September, 1998 and was sent to the Government under the cover of letter dated 29th September, 1998 which was received by the State Government on 3rd October, 1998. 4th October, 1998 being a holiday, the representation was considered on 5th October, 1998 and 6th October, 1998. On the said dates, the representation was under active consideration by the concerned section of the Government. The formal decision was recorded on 7th October, 1998 and the communication was sent on the same date. Considering the above dates, it is apparent that the petitioner's representation has been attended to promptly and without any delay.

7. In the matter of Jakirbhai Rahimbhai Nagori [Supra], the Court found that the statements of the witnesses were recorded by the subordinate police officer. The detaining authority, therefore, directed the Superintendent of Police to satisfy as to whether the fear or apprehension expressed by the witnesses was genuine or not and the Superintendent of Police in turn instead of calling the witnesses before him and recording verification, merely wrote 'verified' under the said statements and on the basis of the said endorsement alone, the detaining authority had claimed the privilege. The Court thereupon held that the privilege claimed under Section 9 (2) of the Act was not genuine and the continued detention of the detenu was, therefore, null and void. In the matter of Zubedabibi Rasidkhan Pathan [Supra], this Court has considered the scope of Section 437 (5) CrPC. The Court on facts found that it was a case of non-application of mind, not only qua statutory provisions alone but qua the factual aspect of the case. The Court having held that the order of detention suffered from the patent vice of non-application of mind on that ground alone, quashed the order of detention. In the matter of Bhikhabhai Thakorebhai Patel {Supra}, this Court has held that, 'what is necessary is the subjective satisfaction of the detaining authority and for arriving at subjective satisfaction the detaining authority himself has to apply his mind on the material placed before him. It at all he has doubt about the veracity of the statements recorded either he himself can verify the same or he can ask any other subordinate officer to verify the case. The detaining authority can also verify the statements from the officers who has recorded the same. There is no statutory provision for verifying such

statements by the detaining authority through the person other than those who recorded the same....'

8. Coming to the facts of the present case, I find that two offences punishable under Chapter XVI of the IPC and other provisions have been registered against the petitioner. Even the incidents narrated by the concerned witnesses do disclose the similar offences committed by the petitioner. Further, these offences have been committed in a small village where such incidents have a tendency to affect the entire population, disturbing the even tempo of life and public tranquillity. All the said incidents have occurred in village Sanodar and have been registered at Ghogha Police Station. The statements recorded during the period from 6th August, 1998 to 24th August, 1998 have been verified by the Divisional Police Officer at Ghogha on 8th September, 1998 by calling the witnesses before him. The proposal thereafter is made to the District Magistrate at Bhavnagar. Even the District Magistrate, the detaining authority, had summoned three of the witnesses before him and having verified the statements of witnesses on 22nd September, 1998, the order has been made on 22nd September, 1998. Keeping in view the distance between the place of incidents and the police station where the statements have been verified by the Divisional Police Officer and the seat of the detaining authority, I cannot agree to the contention that the impugned order of detention has been made after an undue delay from the dates of incidents, which should render the order of detention invalid. As observed hereinabove, the statements of witnesses have been duly verified in respect of credibility of the witnesses as well as the need to claim privilege under Section 9 (2) of the Act by the Divisional Police Officer. Even the detaining authority, in the order of detention, has recorded his subjective satisfaction in respect of the genuineness of the statements made by the witnesses and the need to claim privilege under Section 9 (2) of the Act. In my view, therefore, the privilege claimed by the detaining authority under Section 9 (2) of the Act in respect of the said witnesses cannot be said to be unjustifiable. It is true that the petitioner has been, in both the criminal cases, released on bail. It is apparent that the detaining authority was alive to the fact that the petitioner was released on bail and thus all the relevant materials has been taken into consideration by the detaining authority while recording his subjective satisfaction. It is well-established law that the order of preventive detention would not be vitiated merely because the prosecution has a right to move the court for cancellation of the bail.

9. In the matter of Jakirbhai Rahimbhai Nagori {Supra}, the detaining authority had not verified the statements of witnesses personally nor was there proper verification by the District Superintendent of Police either. In the present case, however, I find that the witnesses were summoned before the Divisional Police Officer at Ghogha and the Divisional Police Officer has properly recorded the verification. In view of the judgment of this Court in the matter of Bhikhabhai {Supra}. The subjective satisfaction recorded on the basis of verification recorded by the Divisional Police Officer, a subordinate officer, cannot be vitiated. In the matter of Zubedabibi [Supra], the Court found that the detaining authority was not alive to the relevant factor that no conditions were attached by the Court while releasing the detenu in the said case on bail, in the offence registered against him and the detaining authority had recorded the subjective satisfaction that the prosecution could not have, but for the breach of condition, moved the Court under Section 437 (5) CrPC for cancellation of bail. The order of detention was, therefore, vitiated for non-application of mind. On the facts of the present case, the said judgment shall have not applicability.

10. For the reasons recorded hereinabove, the petition is dismissed. Rule is discharged.

Prakash*